

# Minority Report by Senators Joyce, Bob Brown and Xenophon

## Introduction

- 1.1 This inquiry was established to assess the Food Standards Amendment (Truth in Labelling Laws) Bill 2009 introduced to the Senate on 20 August 2009 by the Leader of the Nationals in the Senate, Senator Barnaby Joyce, Leader of the Australian Greens, Senator Bob Brown and Independent Senator Nick Xenophon.
- 1.2 The Food Standards Amendment (Truth in Labelling Laws) Bill 2009 is designed to require Food Standards Australia New Zealand in its authority to develop and approve certain food labelling standards regarding the use of the word "Australian" on packaging and also to require greater detail of the country of origin of ingredients used in food products.
- 1.3 The Amendment seeks to provide consumers with greater truth in labelling and to remove any possibly misleading or deceiving claims about the product, where it's been produced and where the ingredients come from.
- 1.4 As stated by consumer advocate, CHOICE, in its submission to the Committee:

"Public debate about country of origin of food and consumer feedback ... suggests that Australian consumers want to be able to identify Australian products. They need food labels to give them the information they need to make purchasing decision that support Australian farmers, Australian manufacturers and Australian workers. This does not mean that consumers will always purchase a product that is "Made in Australia" or a "Product of Australia" when it is available, but they do want to be able to confidently identify them when they do exist."<sup>1</sup>
- 1.5 For example, under these current regulations, a meat pie could be labelled as "Made in Australia" when in fact none of the meat within the meat pie comes from Australia.
- 1.6 Section 65AC of the Trade Practices Act 1974 currently states that goods can be represented as the "product of" a particular country if:
  - the country was the country of origin of each significant ingredient or significant component of the goods; and,

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<sup>1</sup> CHOICE, *Submission 6*, Pg 3

- all or virtually all, processes involved in the production or manufacture happened in that country.<sup>2</sup>

Further, Section 65AB states that goods can be represented as "manufactured" or "made in" a particular country if:

- the goods have been substantially transformed in that country; and
- 50 percent or more of the cost of producing or manufacturing the goods (as the case may be) is attributable to production or manufacturing processes that occurred in that country.<sup>3</sup>

- 1.7 In the case of a meat pie, therefore, despite the fact that the meat and the ingredients for the gravy might be imported, under current regulations, because the packaging, the pastry and the gravy of the meat pie has been "transformed" and/or combined in Australia, it can be marketed and sold as "Made in Australia".
- 1.8 This is just one example of how consumers are not being provided with clear and accurate labelling information to enable them to make an informed choice about the products they are purchasing.
- 1.9 The Horticulture Australia Council advised the Committee in its submission that Australian consumers have a number of reasons as to why they desire and demand truthful labelling.

"Consumers' reasons for desiring this information may vary (eg. health reasons, desire to support locally-grown produce or economies, religious requirements, the 'country of origin effect', perceptions of food safety, environmental or human rights considerations, etc.), but the outcome remains the same – clear labelling which removes imprecise or ambiguous terms from packaging."<sup>4</sup>

- 1.10 Further, the Bill is aimed at benefiting Australian producers whose livelihoods have been affected by cheaper ingredients imported from overseas, but which, under current regulations, can be labelled as "Made in Australia" as long as it has been substantially transformed and 50 percent or more of the cost of manufacturing the product has been in Australia.
- 1.11 Orange juice, for example, may be contained in a carton which has been made in Australia, wearing a label which has been printed in Australia and the juice company is Australian-owned, but the orange juice itself is made from orange juice concentrate imported from Brazil.

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<sup>2</sup> Trade Practices Act 1974, *Section 65 AC*

<sup>3</sup> Trade Practices Act 1974, *Section 65 AB*

<sup>4</sup> Horticulture Australia Council, *Submission 5*, Pg 3

Under current regulations, this juice can be sold as "Made in Australia" because more than 50 percent of the cost of producing the juice was in Australia and the ingredients were "substantially transformed" here, from a concentrate into juice.

However, whether consumers recognise the distinction when they pick up this carton of juice that states "Made in Australia", is another question.

The use of the word "Australia" implies the food product – not the packaging – is Australian. It suggests that the juice is from Australian-grown oranges and in this way it is misleading.

- 1.12 This Bill seeks to address these issues, and requires that Food Standards Australia New Zealand (FSANZ) implement labelling standards which require manufacturers to provide consumers with clear and accurate labelling.
- 1.13 Manufacturers and some industry groups have argued against this Bill on the basis that the cost of implementing these changes would be significant. Further, it contends that the logistics of how labelling requirements would 'fit' on packaging is difficult in terms of font sizing.

However, while these may be practical concerns, the ultimate focus has to be on manufacturers providing Australians with relevant and truthful knowledge to enable them to make an informed choice about the foods they purchase and consume.

### **Australians want to buy Australian**

- 1.14 Multiple surveys have confirmed Australians want to buy Australian products – products which use ingredients grown in Australia and which contribute to the Australian economy in the way of jobs.

According to a 2005 Auspoll survey, 97 percent of Australians wanted to have clear information on the country of origin of their foodstuffs.

A 2009 survey also found that 82.5 percent of supermarket shoppers checked if the produce was Australian-grown fruit and vegetables and foodstuffs "most of the time".<sup>5</sup>

- 1.15 The Australian Food and Grocery Council argued in its submission to the Committee that:

"Many consumers do not read the product label in detail every single time they purchase the product."<sup>6</sup>

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<sup>5</sup> Growcom, *Submission 2*, Pg 2

<sup>6</sup> Australian Food and Grocery Council, *Submission 9*, Pg 7

But, according to CHOICE:

"A 2003 study commissioned by Food Standards Australia New Zealand found that 49 percent of consumers reported that they use country of origin information. Country of origin ranked as the fourth most commonly used labelling element behind use by and best before dates (85%), ingredients lists (66%) and nutrition information panels (66%)."<sup>7</sup>

Further, as Senator Joyce stated during the Senate Committee hearing:

**Senator JOYCE**—Do you believe that the punter on the street knows the difference between ‘processed in Australia’, ‘made in Australia’ and ‘produced in Australia’?

**Mr MacDonald (Riverina Citrus)**—No. It is very difficult for most consumers. I think something visual and graphic like that—

**Senator JOYCE**—They would understand that very quickly.

**Mr MacDonald**—...whether it be a bar graph, a pie graph or something else, would be useful for most consumers. Whether they choose to change their behaviour or not is entirely up to them.

**Senator JOYCE**—That is choice; they have the choice. But at least then they could be saying: ‘I actually want to buy stuff from the Riverina; I’m a supporter of farmers in the Riverina, so I’m prepared to pay 20c more to support Australian farmers and that is my choice. Tomorrow I may choose something different.’<sup>8</sup>

- 1.16 The intent of the Bill is to provide clear and accurate labelling to enable consumers to make informed purchasing decisions.

Independent Member for Fisher in the Parliament of South Australia, Mr Bob Such, stated in his submission:

"Ethical eating is a growing trend among conscientious consumers and the current situation regarding the labels "Made in Australia", "Product of Australia" or "Australian Grown" is deceiving consumers. When consumers buy Australian made products they believe they are supporting Australian producers and businesses, with the profits staying in Australia to support our economy and Australian jobs. These labels need revision and tighter definition."<sup>9</sup>

- 1.17 Indeed, the importance of labelling was demonstrated in 2005 when Country of Origin Labelling standards came into effect under FSANZ. However, this was only applied to fresh produce, seafood and pork and was not adopted for other meats or dry goods.

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<sup>7</sup> CHOICE, *Submission 6*, Pg 3

<sup>8</sup> Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 30

<sup>9</sup> Mr Bob Such MP, *Submission 28*, Pg 1

- 1.18 Mr Sean McShane from McShane's Produce in North Queensland wrote to the Committee and stated that:

"Consumers have a right to know where their food comes from. It is their choice. It is increasingly difficult to decipher exactly where the food in the can/package has come from. The package may have the kangaroo on it but that doesn't mean the food is Australian. Australian growers want an equal opportunity to compete on an equal market. The current labelling system does not allow this, as consumers are confused by the labelling into believing the product they are buying is Australian."<sup>10</sup>

- 1.19 Without clear and accurate food labelling, consumers remain confused, misled and unclear about what they're purchasing and eating.

"... consumers are faced with an array of claims on food labels including: 'Manufactured in Australia', 'Made in Australia from local and imported ingredients', 'Made in Australia from imported and local ingredients', and 'Australian Owned', each referring to different aspects of the product and a degree of 'Australian-ness'.<sup>11</sup>

- 1.20 It was agreed that consumer education on this issue remains crucial to provide clarity around these statements, and this Bill seeks to assist in this provision of guidance.

- 1.21 Mr Geoffrey Parker, CEO of Australian Beverages Council Ltd, along with Ms Kate Carnell from the Australian Food and Grocery Council, argued to the Committee that the current use of the word 'imported' on labels already identifies the use of non-Australian ingredients.

However, as Senator Xenophon explained in the Committee hearing:

**Senator XENOPHON**—The complaint I get from Riverland fruit growers in my home state, Ms Carnell, is about having to compete against fruit juice concentrate from Brazil. The content is around 70 percent from overseas sources and it says 'made in Australia'. How is that reasonable?

**Mr Parker**—We have proposed that the label should say 'made in Australia', and, in that case, if the majority of it is from overseas, then it should say 'made in Australia from imported and local products'. The word 'imported' should be on the label first.

**Senator XENOPHON**—But you have no idea how much is local and how much is imported, have you?

**Mr Parker**—Just to reiterate the enforcement issue, as I mentioned at the start, that is why Fruit Juice Australia, has developed and administers its own code of practice—to plug that gap of enforcement.

**Senator XENOPHON**—Let us look at legislation, though. Let us look at what the ACCC says. It says that if a business makes an equivocal claim, a

<sup>10</sup> McShane's Produce, *Submission 11*, Pg 2

<sup>11</sup> CHOICE, *Submission 6*, Pg 3

qualified claim, such as 'made in Australia from local and imported ingredients', you could have 90 percent concentrate from overseas and 10 percent local produce and it could still be passed off as made in Australia from local imported ingredients. It could be a fraction of Australian produce. Correct?

**Mr Parker**—Sure, yes.

**Senator XENOPHON**—Isn't that inherently misleading to consumers?

**Mr Parker**—Once again, it probably comes back to that consumer education strategy.

**Senator XENOPHON**—How do you educate consumers with that sort of labelling, which you seem to be happy with?

**Mr Parker**—If the majority of the concentrate comes from overseas, then the word 'imported' has to be there first and foremost.

**Senator XENOPHON**—We are none the wiser as to how much is imported, are we?<sup>12</sup>

- 1.22 Similarly, the Horticulture Australia Council in its submission to the Committee stated that leaving the labels up to interpretation does not provide consumers with any greater knowledge about the origins of the food they are consuming.

"...a label which refers to produce being 'imported' without specifying which country or countries that produce was imported from, adds nothing of value to the consumer to meet their information needs."<sup>13</sup>

- 1.23 This opinion was shared by Mr Richard Mulcahy, CEO of AUSVEG Ltd:

**Mr Mulcahy**—I am very much of the view that the consumer is very much inclined to take things on face value. When we see the term 'made in Australia', it is a reasonable proposition that any consumer would assume that product is in fact produced here locally. The fact that there is a glaring loophole in the current arrangements which enables operators, importers and manufacturers to sidestep what I think is a reasonable expectation is certainly a matter of concern. Until these matters are adequately addressed, while these loopholes exist they will be taken advantage of. It is not a case of us just wanting to protect the Australian industry, although we are obviously here to represent those interests. It is a reasonable position to ensure that consumers know the full picture when they purchase these products. If they choose to buy an imported product, so be it. But if they are unwittingly buying a product that they think is Australian but which is in fact not wholly sourced from within Australia that is taking advantage of consumers and is a matter that we would respectfully urge the committee to consider addressing.<sup>14</sup>

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<sup>12</sup> Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 6

<sup>13</sup> Horticulture Australia Council, *Submission 5*, Pg 4

<sup>14</sup> Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 60

## The not-so Aussie Meat Pie

- 1.24 The Australian Made Campaign, which seeks to promote the identification of Australian produce through its iconic green triangle logo and kangaroo, and which broadly supports the intent of the Bill, explained in its submission to the Committee that:

"The 'Australian Made' claim, as currently defined in the TPA and consequently the Food Standards Code, relates to manufacturing processes and costs of production, rather than content. A food product which contains a high percentage of imported ingredients can still legally be described as 'Australian Made', provided it meets the twin criteria of 'substantial transformation' in Australia and 50% of costs incurred locally."<sup>15</sup>

- 1.25 Indeed, under these regulations, the iconic "Aussie" meat pie, for example, could be labelled as "Made in Australia", even if all of the ingredients are imported, which Nestle Australia Ltd and the Australian Food and Grocery Council conceded during the Senate Committee hearings.

**Senator XENOPHON**—Isn't the lack of understanding inherent in the current labelling laws when you have a situation where a product says 'made in Australia', which is a big, bold statement? Going back to the meat pie situation, under the substantially transformed rule there might not be any Australian meat in the pie; the packaging, the pastry and the gravy might all be made here but the meat might be imported. How is that fair to consumers?

**Mr Kelly (Nestle Australia Ltd)**—We have a number of factories in Australia, and we make stuff within the factories. It is made in Australia.

**Senator XENOPHON**—If I am a consumer and a meat pie is labelled 'made in Australia', shouldn't I expect that the meat in that pie is Australian?

**Mr Kelly**—If it says 'product of Australia' then you would.

**Senator HEFFERNAN**—Why does this package say 'processed in Australia'?

**Mr Kelly**—I would say that that package and the package that you held up before are wrong.

**Senator JOYCE**—What if it says 'made in Australia' but the pastry comes in one shipment from China, the mix comes in another shipment from Taiwan and the pepper comes in from Pepperville in India or wherever they make pepper, and it all arrives here and the final part is that they bang it together and put it in a plastic cover that came in from Thailand. Is that now 'made in Australia'?

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<sup>15</sup> Australian Made, Australian Grown Campaign, *Submission 1*, Pg 2

**Ms Carnell (Australian Food and Grocery Council)**—Not unless it is substantially transformed and more than 50 percent of the value was introduced in Australia.

**Senator JOYCE**—No, it was substantially transformed, because the meat came from one section, the pastry came from another section and the plastic came from another section. It was transformed from plastic and pastry and meat into a pie, and it all happened in a shed in Cabramatta. So that is now ‘made in Australia’.

**ACTING CHAIR**—I ask the panel: under those circumstances, would it say ‘made in Australia from imported ingredients’?

**Ms Carnell**—Yes.<sup>16</sup>

- 1.26 However, a number of Senators questioned the fairness of this during the Committee hearings, given the confusion facing consumers.

**Senator HEFFERNAN**—This box has a label saying ‘made in Australia’; it is Seaport frozen seafood. It came from a restaurant in Canberra that for five years was selling its prawns as southern Queensland farmed prawns. I went there and said, ‘I’ll have the prawns, thanks’—it was an hors d’oeuvre, pre the main meal—‘if you can tell me which farm they came from.’ They came back and said, ‘We can’t’. I said, ‘I’ll have them anyhow; they look pretty good.’ At 10 o’clock the chef came back and said, ‘I went out to the garbage and got the packet’. He had been buying them for five years. These are Indonesian prawns, but the package said ‘made in Australia’. Even the shop thought they were buying Australian farmed prawns, and they were selling them on the menu as Australian farmed prawns. That is ridiculous. This bottle of water, Aqua, has on it ‘Proudly Australian’. I do not know whether you have seen it in supermarkets; I think it has gone now. If you tip it on its side you will read ‘Product of China’. We import Chinese bottled water. This is water from China. I rang up the mob on the label and I said, ‘What’s Chinese about your water: the bottle, the cap?’ They said, ‘It’s wholly imported from China.’ It comes in at 28c—this is a couple of years ago—and wholesales for 38c as a loss leader and retails for \$2.50. It is bottled water from China, but the label says ‘Proudly Australian’. This bottle says Disney Channel; it turned up in my office. It has no labelling on it; we do not know where it comes from as it has nothing on it except its name, Disney Channel water. I presume it is legal if you do not sell it; they might give it away. I have no idea where it comes from. This bottle is called NEWater, a product of PUB, and it says ‘Water for All: Conserve, Value, Enjoy’. It is actually recycled sewage water from Singapore.<sup>17</sup>

- 1.27 Furthermore, by allowing manufacturers to continue to not identify the country of origin or the proportion of the ingredients which are imported on its label, food safety concerns of consumers cannot be allayed.

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<sup>16</sup> Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 10

<sup>17</sup> Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 5



- 1.28 At the time of this inquiry, the Government announced it was considering relaxing BSE-import laws. Under the current labelling regulations, this could make it possible for meat from BSE-affected countries to be used in meat pies in Australia, without the knowledge of the consumer.

**Senator XENOPHON**—With the substantial transformation rule of 50 percent, you could have the situation where someone buys something that says ‘made in Australia’—for instance, with Australia opening up to meat products from BSE-affected countries—and there is meat from a BSE-affected country but the packaging, the pastry and the gravy are Australian made, so it can still be passed off as made in Australia. Does that concern you, Ms Carnell?

**Senator HEFFERNAN**—The old Aussie meat pie.

**Ms Carnell**—It would certainly worry me if there was any doubt about the safety of the product.

...

**Senator XENOPHON**—That is not the issue. I do not want you to misinterpret what I am saying. As a consumer, if I want to buy a meat pie, if it says ‘made in Australia’, I think most consumers—you are talking about a low level of education of consumers—would expect that that pie is made in Australia and the meat in that pie is Australian. But, under the current rules, the substantial transformation rule, the 50 percent rule, you could get a situation, especially with the Aussie dollar going through the roof, where you have meat from a BSE-affected country. Leaving aside the question of safety, it is a question of an informed choice for the consumer. How can the consumer be confident that that food-labelling law is reasonable?<sup>18</sup>

### **Impact of current labelling standards on Australian industry**

- 1.29 In 2008-09, exports of vegetables totalled \$252.7 million, according to the Australian Bureau of Statistics. Vegetable imports, by contrast, were \$637.2 million in total.

Mr Mulcahy from AUSVEG Ltd told the Committee:

"Despite the long history and strong community ties of the domestic vegetable industry, the local industry and by extension local growers have been in recent years continuously threatened by external influences, including imports from China and rising input costs such as labour."<sup>19</sup>

- 1.30 Australian food growers are suffering as a result of cheap imports being able to enter the market and be sold as "Australian".

<sup>18</sup> Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 7

<sup>19</sup> Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 59

The Horticulture Australia Council explained the impact on Australia's fruit growers as a result of cheap imported fruit juice concentrate being sold as "Made in Australia":

"The concerns of the Pome (apple and pear) Industry – specifically the juicing sector – continue to escalate, as the impact of cheap imported fruit juice concentrates takes ever greater market share from locally-produced juice. The industry believes that consumers are being misled when they read a label which states: "Made in Australia from local and imported ingredients". [APAL] believes that as little as 5% of Australian juice is being incorporated by juice manufacturers into reconstituted products – but it is still legal to describe the end-product as "Made in Australia from local and imported ingredients". It has even been reported that some manufacturers may not be incorporating any local concentrate at all, but simply adding Australian water to enable them to legally utilise this declaration."<sup>20</sup>

1.31 This is supported by the submission to the Committee from Mr Bob Such MP:

"Indeed, there are a number of products that could be misleading consumers. Apple Juice being sold under the name of Goulburn Valley comprises 100 percent imported apple juice but the container states that it is made in Australia from imported ingredients ... According to apple growers, the use of these terms and the use of imported produce reduce the price offered to Australian growers for juice."<sup>21</sup>

1.32 While knowing the country of origin may not always guarantee consumers buy Australian, clearer labelling provides, as this Bill intends, greater and more accurate information to be given to consumers to enable a more informed choice.

### **Response to criticisms of the Bill**

1.33 Submissions to the Committee inquiry identified a number of industry concerns around this Bill.

#### ***'Costs of compliance'***

1.34 Groups including the Australian Food and Grocery Council, the Australian National Retailers Association, National Foods and the Australian Dairy Industry argued that the cost to manufacturers of changing their processes to adopt new labelling standards would result in significant and ongoing costs.

1.35 However, President of the Griffith Citrus Growers, Riverina Citrus, Mr Bartholomew Brighenti, told the Committee that, from a practical level,

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<sup>20</sup> Horticulture Australia Council, *Submission 5*, Pg 7

<sup>21</sup> Mr Bob Such MP, *Submission 28*, Pg 1

complying with the proposed labelling standards of this Bill would not be unreasonable, difficult or costly.

**Mr Brighenti**—We have read some of the other submissions, and they have said that it is going to be costly and difficult to put on the label what percentage of juice is in it and what percentage is Australian. We as a packer are required to put on it exactly how much is packed and where it is from, and we must have traceability. When our fruit arrives in the US market, they will be able to quote us the number or the bar code on the box, and we must have the traceability all the way back to be able to find out which grower that fruit in the box came from—and his spray diary has to be kept at hand. We have to follow such strict guidelines, and we cannot see why the manufacturers seem to say that it is too difficult, when they are the ones pushing us to have such a high degree of traceability. We find that very unusual. All our labels have to be printed with all that information, so I cannot see why they have difficulty doing in it. For that Nudie label, people said it was too difficult to put the percentage of juices on there. If you read that, it actually tells you on the back what percentage of each juice is in it. Yet they said it was going to be too hard to put where it comes from. I do not think that would be much extra.<sup>22</sup>

- 1.36 Indeed, the labelling of products is continually updated, modified and changed and is considered a cost of doing business. As the Horticulture Australia Council stated in its submission to the Committee:

"It must be borne in mind that manufacturers seem very willing to undergo the 'pain' of such re-printing/re-tooling where they perceive a benefit (for example, adding claims such as 'Good source of folate', 'NEW!!', '20% more FREE!', or 'GI of x' to labels).<sup>23</sup>

- 1.37 This was supported by AUSVEG Ltd, which stated that:

"Existing technology for packaging enables changes to be readily completed in a short timeframe and, furthermore, in a cost efficient way. Indeed, in a rapidly globalising world, where changes to marketing and renewal of product are a constant for firms seeking to maintain a competitive advantage, packaging remains a key competitive strategy that requires constant updating. Label changes are simply an ongoing cost of doing business."<sup>24</sup>

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<sup>22</sup> Mr Bartholomew Brighenti, Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 30

<sup>23</sup> Horticulture Australia Council, *Submission 5*, Pg 5

<sup>24</sup> AUSVEG, *Submission 7*, Pg 5

- 1.38 Further, evidence suggests that many Australian consumers who seek to support Australian industries and jobs would likely be willing to pay slightly increased costs if they could be certain that the product was wholly Australian.

"Studies in the US in 2003, found that US consumers are willing to pay a range of premiums if they perceive that a product's origin is integral to its quality. Similar recent polls in Australia have mirrored these outcomes."<sup>25</sup>

- 1.39 Riverina Citrus gave the example of the Use By Date which is a clear example of continually changing data on packaging.

"Criticisms of the Bill based on the cost and technical challenges of changes to labels is not credible. Current labelling technology and practices easily accommodate rapid and frequent changes to labels. With the technology in use today, there is minimal if any additional costs associated with changes to labels. Frequent label changes (such as Use By Dates) are a standard feature of all food packaging industries."<sup>26</sup>

***'Seasonal effects and/or the need for certain imported ingredients'***

- 1.40 It became clear during the Committee hearings that seasonal changes and unexpected events may require certain ingredients to be imported.

Nestle, for example, advised that, due to local drought conditions, it recently imported oats for one season from Canada for its Uncle Toby's brand. Nestle argued that changing labelling to accommodate for this unique variation would cost between \$200 and \$1000.<sup>27</sup>

- 1.41 However, a suggestion was made to the Committee to account for this whereby the labelling is averaged over a two-year period or similar, and consumers advised that it is an average calculation, so as to reduce the compliance concerns of industry.

- 1.42 Similarly, it is understood that there are some ingredients which cannot be sourced in Australia, such as enzymes for cheese, brine for ham or cocoa for chocolate, and it was put to the Committee that this Bill would result in no products being able to be labelled "Australian".

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<sup>25</sup> Horticulture Australia Council, *Submission 5*, Pg 5

<sup>26</sup> Riverina Citrus, *Submission 24*, Pg 1

<sup>27</sup> Mr Peter Kelly – Nestle, Senate Economics Committee, *Proof Committee Hansard, 30 October 2009*, Pg 4

- 1.43 However, the premise of this Bill is to provide greater knowledge for consumers to make an informed choice. As Senator Xenophon pointed out during the Senate Committee hearings, the main ingredient of the product is what most consumers are concerned about.

**Senator XENOPHON**—When the consumer is buying a fish finger, a meat pie or orange juice and it says ‘made in Australia’, shouldn’t they be entitled to expect that the principal ingredient that we are purchasing as consumers, which is very clear—in a meat pie it is the meat, in orange juice it is the juice, if it is ham then it is Australian ham, leaving aside issues of brine or seasoning—is Australian? Wouldn’t it be reasonable to expect that the principal ingredient, which is the basis upon which consumers are making their decision, ought to be 100 percent Australian if you are calling it ‘made in Australia’ or ‘product of Australia’?<sup>28</sup>

- 1.44 Furthermore, current labelling standards allow packaging to be included within the calculations for what is or isn’t considered “Australian”, but as was fairly asserted during the Committee hearings, consumers don’t eat packaging.

While certainly the production of packaging does contribute to Australia's economy, most consumers would argue that when they read the “Made in Australia” claim, they believe it to be in relation to the food item itself, not the plastic which contains it.

**Mr Harrison (Australian Made Campaign)**—The Trade Practices Act never talks about 100 percent; it talks about all the ‘significant components’ and ‘significant processes’. That is when you can use ‘product of Australia’ or ‘Australian grown’. ‘Australian grown’, in our rule book, basically reflects ‘product of Australia’, but it talks about ‘grown’, so it is just talking about produce, not letting packaging or anything like that come into it.<sup>29</sup>

### *'Little consumer demand'*

- 1.45 The Australian Dairy Industry Council, the Australian Food and Grocery Council, Coles and Nestle Australia argued in their submissions that consumers’ primary concerns are the price and quality of a product, suggesting that the origin and “Australian-ness” of the product was not a concern for consumers.
- 1.46 However, numerous surveys provided to the Committee prove that this isn't the case, including a 2005 Auspoll survey which found that 97 percent of Australians wanted to have clear information on the country of origin of their foodstuffs and a 2009 also survey that found that 82.5 percent of supermarket

<sup>28</sup> Senate Economics Committee, *Proof Committee Hansard*, 30 October 2009, Pg 8

<sup>29</sup> Mr Ian Harrison, Senate Economics Committee, *Proof Committee Hansard*, 5 October 2009, Pg 4

shoppers checked if the produce was Australian-grown fruit and vegetables and foodstuffs "most of the time".<sup>30</sup>

- 1.47 During the Senate inquiry, AUSBUY Ltd conducted a short national online survey of customer's needs and expectations.

It found that 97.7 percent of respondents believe it is important to buy food produced and made in Australia rather than imported foods.

Similarly, 94.9 percent answered that it is important to buy food produced and grown in Australia, based on knowing that the label is truthful.

95.5 percent of respondents said that they would want to know what percentage of the product was grown in Australia and 98.1 percent said they that would want to know the country of origin of their food products.

The survey also found that 99.1 percent think truth in labelling is important.<sup>31</sup>

- 1.48 The survey was conducted over 4 days with a sample of 437 people, which is a sufficient sample from which to draw conclusions.

- 1.49 Given these results, it is clear that Australians do want truth in labelling and do want to be provided with accurate information from which they can make an informed choice.

### ***'Variations of the word "Australian"'***

- 1.50 While this Bill does use the word "Australian", it was incorrectly assumed in a number of submissions and also during Committee hearings that this would subsequently disqualify the use of the word "Australia" or variations thereof.

- 1.51 However, under the Acts Interpretation Act 1901, section 18A:

"In any Act, unless the contrary intention appears, where a word or phrase is given a particular meaning, other parts and speech and grammatical forms of that word or phrase have corresponding meanings."<sup>32</sup>

- 1.52 This is consistent across all legislation, and therefore FSANZ would allow for versions of the word "Australian" to be used, as long as it met with the intent of the Bill which is to provide consumers with more accurate information around how much of the product they are purchasing is "Australian".

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<sup>30</sup> Growcom, *Submission 2*, Pg 2

<sup>31</sup> AUSBUY, *Response to the Senators' Requests for Additional Information*, 30 October 2009

<sup>32</sup> Acts Interpretation Act 1901, Section 18A

**'Font size'**

- 1.53 This Bill recommended that packaging include labels in 15mm font. While this may not be practical for certain products due to the size of the packaging (for example a 125ml can), manufacturers have, so far, been able to determine font sizes for other labelling requirements such as nutrition panels, on products of all sizes.
- 1.54 In the same way, determining an appropriate size and location could easily be undertaken.
- 1.55 Alternatives to a written label were proposed during the Senate inquiry, included a gold disc system.

**Senator JOYCE**—From a distance it just seems like people are trying to be deliberately evasive about telling a consumer whether something is Australian or not. If we have to work on the area of grading then why don't we have a coding scheme, as has been suggested before, where you have a gold disc and if it is 100 percent Australian product then the disk is 100 percent gold, if it is 75 percent Australian product then you have 75 percent of the disk gold, and if it is 20 percent Australian product then you have 20 percent of the disk gold. Then you could have the same idea for Australian manufactured—if it is 100 percent manufactured in Australia then the disk would be 100 percent gold; if it is 50 percent manufactured in Australia then the disk would be 50 percent gold.<sup>33</sup>

- 1.56 Dick Smith also suggested a percentage be used on the label to indicate how much of the product was 'Australian'.

"We would therefore suggest that it would be much more relevant to consumers to know the level of Australian content in a form of a percentage, rather than limiting the use of the term Australian to 100% Australian content. We believe the label should show the percentage as simply "x% Australian Product".<sup>34</sup>

- 1.57 These would all be valid options, and share the same purpose – to provide consumers with a clear understanding of how much of the food product they are purchasing is pure Australian content.

**'The FSANZ inquiry'**

- 1.58 The Committee Majority Report has recommended that the concerns this Bill is seeking to resolve would be more appropriately dealt with through the Australia and New Zealand Food Regulation Ministerial Council Review of Food Labelling and Policy currently underway.

<sup>33</sup> Senate Economics Committee, *Proof Committee Hansard*, 5 October 2009, Pg 5

<sup>34</sup> Dick Smith Foods, *Submission 4*, Pg 1

- 1.59 However, it is clear to see, even from the Terms of Reference for the review, that it will not address the issues of raising consumer awareness.

The Terms of Reference for the review are:

- Examine the policy drivers impacting on demands for food labelling
- Consider what should be the role for government in the regulation of food labelling. What principles should guide decisions about government regulatory action?
- Consider what policies and mechanisms are needed to ensure that government plays its optimum role.
- Consider principles and approaches to achieve compliance with labelling requirements, and appropriate and consistent enforcement.
- Evaluate current policies, standards and laws relevant to food labelling and existing work on health claims and front of pack labelling against the terms of reference above.
- Make recommendations to improve food labelling law and policy.

- 1.60 FSANZ says its focus is to ensure health and safety of food products for sale, and if there are no concerns around health and safety then the issue of labelling is one for the Australian Competition and Consumer Commission to determine whether it is misleading or not.

However, two of FSANZ's objectives are to provide "adequate information about food to enable consumers to make informed choices and to prevent misleading or deceptive conduct."<sup>35</sup>

While the ACCC may prosecute manufacturers for outright false and misleading representations or which may be likely to deceive or mislead consumers, it does not address the issue of provider greater information to the consumer with regards to percentages of imported ingredients which enables consumer choice.

## Conclusion

- 1.61 During the 2007 election, the Labor Party made a commitment to strengthen and simplify food labelling laws. Then in Opposition, the Labor Party acknowledged that:

"... consumers are often confused and do not understand what is meant by 'Made in' and 'Product of' labels."<sup>36</sup>

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<sup>35</sup> *Food Standards Australia New Zealand Act 1991*, section 10

<sup>36</sup> Senator Kerry O'Brien, *Labor's Plan for Primary Industries*, 19 November 2007, pg 9



It was also stated that:

"The recent rapid rise in food imports has increased competition and pricing pressure. Australian producers argue that a lack of clarity in labelling laws erodes the 'Australian' premium and undermines investment confidence in marketing and promotion in the domestic market."<sup>37</sup>

1.62 This Bill is designed to provide consumers with greater truth in labelling and to remove any possibly misleading or deceiving claims about the product, where it's been produced and where the ingredients come from, and to support Australian growers and food producers who are impacted by the use of cheap imported ingredients being marketed as "Australian".

1.63 Given FSANZ recognised in 2005 that Australians do in fact want to know the country of origin of their fresh fruit and vegetables, seafood and pork, it seems strange that this was not extended to all foodstuffs.

1.64 Furthermore, AUSVEG Ltd argues that accurate labelling can be seen as a business advantage:

"Accurate labelling of the source country for fresh unpackaged vegetables has been evident since changes were introduced in June 2006, and some producers have recognised a marketing advantage in the accurate labelling of Australian processed packaged vegetables as well. However, attempts to impose mandatory country of origin labelling for processed packaged vegetables with two or less whole ingredients were rejected."<sup>38</sup>

1.65 It is disingenuous for groups to suggest that there is little consumer demand for greater, clearer information regarding their food.

And, given the number of varying claims that can currently be made on packaging – including: "Made in Australia", "Made in Australia from local and imported ingredients", "Made in Australia from imported and local ingredients", "Australian Owned", "Product of Australia" – there is no doubt many consumers are left confused and unable to differentiate between the claims.

1.66 Consumer education, as suggested by the Australian Food and Grocery Council, is needed, however industry also needs to play its part in providing Australians with easy, clear and identifiable information.

1.67 A number of submissions were also made to the Committee to include the labelling of Palm Oil on food products. Subsequently, Senators Xenophon, Bob Brown and Joyce introduced the Food Standards Amendment (Truth in Labelling – Palm Oil) Bill 2009 which has the same intent as this Bill in terms of providing clear and accurate information to aid consumer choice.

<sup>37</sup> Senator Kerry O'Brien, *Labor's Plan for Primary Industries*, 19 November 2007, pg 9

<sup>38</sup> AUSVEG, *Submission 7*, Pg 2

## **Recommendations**

### **Recommendation 1**

**That this Bill be passed.**

### **Recommendation 2**

**That consultation with manufacturers and industry groups take place to determine an appropriate size and placement of labelling with information to meet these standards and the intent of this Bill.**



**SENATOR BOB BROWN**  
Leader of the Australian Greens



**SENATOR BARNABY JOYCE**  
Leader of the Nationals in the Senate



**SENATOR NICK XENOPHON**  
Independent Senator for South Australia